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No. 559

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, APPELLANT

v.

GERALD H. SHARPNACK

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION

JURISDICTIONAL STATEMENT

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OPINION BELOW

The District Court (Rice, J.) did not write an opinion. A copy of the order dismissing the indictment is annexed (App., *infra*, p. 11).

JURISDICTION

On August 14, 1956, the United States District Court for the Western District of Texas entered an order dismissing the indictment on the ground that 18 U. S. C. 13, insofar as it assimilates state statutes enacted subsequent to the federal statute, is an unconstitutional delegation of legislative authority (App. *infra*, p. 11). A notice of appeal to this Court

was filed in the District Court on September 10, 1956. The jurisdiction of this Court to review on direct appeal an order dismissing an indictment, based on the invalidity of the statute upon which the indictment rests, is conferred by 18 U. S. C. 3731. *United States* v. *Harriss*, 347 U. S. 612.

STATUTE INVOLVED

18 U. S. C. 13 provides:

> Laws of States adopted for areas within Federal jurisdiction.
>
> Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

QUESTION PRESENTED

Whether 18 U. S. C. 13 involves an unconstitutional delegation of the legislative power of Congress insofar as it assimilates state laws adopted after the effective date of the federal statute.

STATEMENT

A four-count indictment brought in the United States District Court for the Western District of Texas charged appellee with committing certain sex crimes at Randolph Air Force Base, a federal enclave in Texas, in violation of Sections 535 (b) and 535

(c) of the Texas Penal Code, as assimilated by 18 U. S. C. 13. The Texas statutes involved were enacted in 1950; the Assimilative Crimes Act was passed by Congress in the 1948 revision of the criminal laws.

On motion of the appellee, the District Court dismissed the indictment on the ground that 18 U. S. C. 13 constituted an unconstitutional delegation of legislative power to the states insofar as it undertook to assimilate state laws enacted subsequent to the enactment of the federal statute.

THE QUESTION IS SUBSTANTIAL

18 U. S. C. 13, as enacted by the 1948 revision of the criminal laws, provides that acts which at the time of commission would be a crime under the law of the state in which a federal enclave is situated shall be a crime when committed within the federal enclave. This is an express and realistic recognition of what has actually been the settled policy of Congress since the first Assimilative Crimes Act of March 3, 1825 (4 Stat. 115)—to make the criminal law of federal enclaves located within a state conform to the law of the surrounding state, except where federal legislation specifically governs.

Before 1948, because of the interpretation given to the Act of 1825 in the brief opinion in *United States* v. *Paul*, 6 Pet. 141, *i. e.*, that that Act assimilated state laws in force at the time of the federal enactment, it was deemed necessary to reenact the assimilative crimes statute periodically so as to keep abreast of changes in state law. This was done in 1866 (14 Stat. 12, 13); 1898 (30 Stat. 717); 1909 (35 Stat. 1088);

1933 (48 Stat. 152); 1935 (49 Stat. 394) and 1940 (54 Stat. 234). This method of assimilation did not fully effectuate the Congressional policy since there was always a lag in the assimilation of new or amended state laws. The 1948 amendment was designed to implement the Congressional policy more effectively and, in the words of the revisers, to make "unnecessary periodic pro forma amendments of this section to keep abreast of changes of local laws." The question here is whether this is beyond the constitutional power of Congress.

The importance of the question in the administration of criminal law within federal enclaves is self-evident. As we become further removed from the date of the 1948 enactment, the number of new state enactments which will be affected by Section 13 will increase. It is important that Congress know whether future legislation is necessary to keep abreast of changing state laws. Moreover, the implications of the decision may go beyond the subject matter of 18 U. S. C. 13, for in many fields Congress has seen fit to refer to provisions of state law for the purpose of federal legislation.

1. We think it unnecessary to judge this statute, viewed in relation to the problem with which it deals, in terms of concepts of delegation of legislative power developed in relation to acts of administrative agencies. There is not present here, as there is in the field of administrative law, any question as to the extent to which the elected representatives of the people may delegate law-making functions to non-elective bodies. And there is no problem of the separation of powers

as between the legislative and executive branches of the government. This is a problem arising out of, and peculiarly related to, our federal form of government with its dual spheres of sovereignty. Basically, 18 U. S. C. 13 represents an accommodation between the legislative functions of state and nation in a field—the area of the police power—where, despite the growth of federal jurisdiction, the interest of the state is still recognized as paramount. The simplest and most direct argument in support of the constitutionality of the statute is that the basic concepts which underlie our federal system of government permit Congress to recognize that, whereas for many purposes federal enclaves have been taken out of state jurisdiction, the state retains such an interest in the criminal conduct of persons physically within the state area that it is legitimate federal policy to adopt state policy in relation to that conduct.

This is what Congress has tried to do since 1825. It is clear by now, whatever may have been thought at the time of the *Paul* decision in 1832, that Congress, in its periodic re-enactments of the assimilative crimes statute, did not review the new laws of the various states but merely accepted state policy as federal policy for federal enclaves, without any scrutiny of the particular state statutes. What would be constitutional, if done *seriatim* by several and separate acts, should not become unconstitutional when the same result, founded on the same legislative policy, is accomplished by one act. Laws are normally passed to meet future events.

2. Article I, § 8, cl. 17, of the Federal Constitution, provides:

> The Congress shall have Power * * *
>
> * * * * *
>
> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; * * *.

This Court has held that the word "exclusive" does not mean "nondelegable." *District of Columbia* v. *Thompson Co.*, 346 U. S. 100, 109–110 (upholding a criminal conviction under acts of the District of Columbia legislative assembly passed pursuant to the Organic Act of February 21, 1871, 16 Stat. 419). As noted in the *Thompson* case, 346 U. S. at pp. 105–107, "The power of Congress over the District and its power over the Territories are phrased in very similar language in the Constitution." And

> * * * "The power which Congress constitutionally may delegate to a territory (subject of course to "the right of Congress to revise, alter, and revoke", *Hornbuckle* v. *Toombs*, 18 Wall. 648, 655) covers all matters "which, within the limits of a State, are regulated by the laws of the State only." *Simms* v. *Simms* [175 U. S. 162, 168].

While the *Thompson* case noted that, so far as the seat of the federal government is concerned, such powers may not be delegated to the surrounding states, different considerations apply to federal enclaves located *within* a state. Thus, this Court has held that the federal government may accept concurrent jurisdiction with the state over federal enclaves, so long as that does not operate to deprive the United States of the enjoyment of the property for the purposes for which it was acquired. *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 141–149. See also *Stewart & Co.* v. *Sadrakula*, 309 U. S. 94, 100–101; *Mason Co.* v. *Tax Commission*, 302 U. S. 186, 207–208. Moreover, since it is clear, as to federal areas (*e. g.*, territories) which are wholly outside the area of any state, that Congress may delegate power to enact police measures to representatives of the people of that area, it should follow, as to federal areas which are wholly within a state, that Congress may delegate similar powers to representatives of the people of that state. The standard of that delegation of power is clear. Congress has determined that federal enclaves within a state shall not be a refuge from the force and effect of state laws in the field where, under our Constitution, state power is paramount. The standard of congressional delegation is the standard of conformity to state law. As Mr. Justice Holmes stated in his dissent in *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, at p. 169 (involving the application of state workmen's compensation laws to maritime work):

> * * * I assume that Congress could not delegate to state legislatures the simple power to decide what the law of the United States should be in that district. But when institutions are established for ends within the power of the States and not for any purpose of affecting the law of the United States, I take it to be an admitted power of Congress to provide that the law of the United States shall conform as nearly as may be to what for the time being exists. * * *

We do not argue that Congress has unlimited power to adopt or follow the laws of the several states, but only that, with respect to the peculiar problem of federal enclaves located within a state, 18 U. S. C. 13 is an appropriate exercise of congressional power, providing for uniform and non-discriminatory application of state laws within such enclaves.

3. The decision below may have implications in other areas of federal legislation, both criminal and civil, in which Congress has employed other devices of reference to state law.

The Webb-Kenyon Act of March 1, 1913, 27 U. S. C. 122 (37 Stat. 699), prohibited the shipment or transportation of intoxicating liquors into a state to be used "* * * in violation of any law of such State". West Virginia subsequently enacted a prohibition law. In *Clark Distilling Co.* v. *Western Maryland Railway Co.*, 242 U. S. 311, 326, this Court upheld the constitutionality of the federal act, stating that there was

no proscribed delegation of power because the will which causes the prohibitions to be applicable is that of Congress. Mr. Justice Holmes considered the holding in the *Clark* case as "* * * justifying the adoption of state legislation in advance". *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, 169 (dissenting opinion). See also the Reed Amendment to the Webb-Kenyon Act (39 Stat. 1058, 1069), held constitutional in *United States* v. *Hill*, 248 U. S. 420.

The Liquor Enforcement Act of 1936, 27 U. S. C. (1946 ed.) 223 (49 Stat. 1928–1930), prohibited the transportation of liquor into a state unless accompanied "* * * by such permit or permits, license or licenses therefor as are now *or hereafter required by the laws of such State*" (emphasis added).[1] Congress has also adopted comparable legislation with respect to interstate shipments of convict-made goods. *Whitfield* v. *Ohio*, 297 U. S. 431; *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U. S. 334.

Another example of a statute which incorporates into federal criminal law the present and future laws of the states is the Fugitive from Justice Act, 18 U. S. C. 1073. See *Hemans* v. *United States*, 163 F. 2d 228 (C. A. 6), certiorari denied, 332 U. S. 801. See also 18 U. S. C. 43; 15 U. S. C. 1171–1177; 15 U. S. C. 715 *et seq.*

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[1] The constitutionality of that Act was upheld in *Hayes* v. *United States*, 112 F. 2d 417 (C. A. 10), but the prospective feature of the statute was not involved.

In the civil field, the Federal Tort Claims Act bases the liability of the United States upon standards established by state law. 28 U. S. C. 1346 (b). See e. g., *Stewart* v. *United States*, 186 F. 2d 627, 630–631 (C. A. 7), certiorari denied, 341 U. S. 940.

The Bankruptcy Act similarly draws upon state law in numerous respects. Thus, 11 U. S. C. 24 provides that the Bankruptcy Act shall not affect the allowance to bankrupts of exemptions prescribed "* * * by the State laws *in force at the time of the filing of the petition* * * *" (emphasis added). This Court unanimously held this section constitutional in *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 189–190. Without specifically alluding to the fact that the statute, on its face, would apply to both present and future laws, the Court ruled that there was no unlawful delegation of legislative power.

Under 50 U. S. C. App. 1894 (i) (1) and (2), provisions were made for states to remove their areas from federal rent control provisions either by passing rent control legislation of their own or by determining that rent control was unnecessary. This Court summarily upheld the constitutionality of these sections. *United States* v. *Shoreline Cooperative Apartments*, 338 U. S. 897 (per curiam), reversing *Woods* v. *Shoreline Cooperative Apartments*, 84 F. Supp. 660 (N. D. Ill.).[2]

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[2] For other civil statutes in which Congress has conditioned federal action on actions or determinations by the states, see *Gauley Mountain Coal Co.* v. *Director of U. S. B. of Mines*, 224 F. 2d 887, 890–891 (C. A. 4), and cases there cited.

CONCLUSIONS

The instant case raises a substantial and important question arising under the Constitution and laws of the United States. This Court should note jurisdiction of the appeal.

Respectfully submitted.

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NOVEMBER 1956.

APPENDIX

In the United States District Court, Western District of Texas, San Antonio Division

Criminal No. 21104

UNITED STATES OF AMERICA

v.

GERALD H. SHARPNACK

ORDER DISMISSING INDICTMENT

The Court, after having considered the defendant's motion to dismiss the indictment in the above cause, and considering the briefs submitted by counsel herein, is of the opinion that the defendant's motion should be granted, for the reason that Congress may not legislatively assimilate and adopt criminal statutes of a state which are enacted by the state subsequent to the enactment of the Federal Assimilative Statute.

It is further the opinion of this Court that Section 13, Title 18, United States Code, enacted in 1948, wherein it assimilates and adopts said criminal statutes enacted by the state subsequent to the enactment of said section, to-wit: Articles 535 (b) and 535 (c) of the Texas Penal Statutes, enacted in 1950, upon which all four counts of this indictment are predicated, is a delegation of Congress' legislative authority to the states in violation of the Constitution of the United States.

For the reasons aforesaid, the indictment in this cause is DISMISSED.

SIGNED this, the 10 day of August 1956.

(Signed) BEN H. RICE, JR.,
United States District Judge.

ENTERED: Minute Volume X-1, Page 787.